

Message

From: Bill Bettenberg [BBettenberg@homerlaw.com]
Sent: 11/11/2013 8:53:00 PM
To: Lee, Bessie [Lee.Bessie@epa.gov]
CC: brad.rea@ihs.gov; 'Lorenz, Robert (IHS/PHX)' [Robert.Lorenz@ihs.gov]; 'Hughes, Adam (IHS/PHX)' [Adam.Hughes@ihs.gov]; lpuhuyesva@hopi.nsn.us
Subject: Response to your comments on the Hopi HAMP Tribe-Village MOA

Bessie – Thanks for your comments on our draft MOA; they were helpful. A number of your items were questions and I thought it would be helpful to provide you with a direct answer on those as follows:

1. First, Brad Rae appears to have turned our more vernacular language on Safe Drinking Water Act standards into more technical ones. You might have tended the same direction in the absence of his changes. We have more or less accepted a number of those where they relate to arsenic, keeping in mind that this is an intra-tribal agreement that will be reviewed by a number of people on the Reservation and there is no need and substantial disadvantage to have a very technical agreement. Regarding the vernacular issue as one minor point, for instance, someone suggested changing EPA to USEPA. Everyone (including people I know who, when asked who they work for will say, “EPA”) knows the agency as EPA and I can’t think of any useful reason to change that. RDA used to be a lot more convenient than USDA-RD, which elicits blank stares from people.
2. On item 4 in the recitals (“mutual understandings”), we emphasized the arsenic compliance plans because the recitals are the place to lay out the case of why everyone needs to be on board. I think everyone involved at the reservation, however, understands that the water system has to meet all federal water quality standards. “All applicable standards” which we included in recital 1 is a non-technical way to say that and leaves open the possibility that the Tribe may also have some of its own standards someday. Right now, for instance, Lionel is trying to resurrect and complete the Tribe’s wastewater ordinance, which would be a good thing. Micah Loma’omvaya, for instance, knew that the Tribe was working on these, assumed they were in place, and wanted to make sure the Shungopavi wastewater collection and treatment system complied with them.
3. On item 16, you asked about BIA paying to connect up to HAMP, including sharing in the HAMP cost as well as the hook-up cost. Our (the Tribe and IHS) plan assumes this and are planning for the connector to connect directly to HAMP near the First Mesa water tank so that there is not an intermediary consecutive system in between. The First and Second Mesa water pipelines are pretty shallow in a variety of locations and have a tendency to break in freezing weather because they were not constructed below the frost-free zone. On the financing end, our proposal is for Indian Affairs to pay for the cost of constructing the connection line to its Keams Canyon system and to the two schools as well as paying for the BIA/BIE share of HAMP based on allocating HAMP joint costs to all wholesale customers based on the estimated share of the HAMP water needed to meet their demand. Unfortunately, we still don’t have the proposed BIA/Tribe/IHS agreement back from the Assistant Secretary – Indian Affairs. They keep saying they are committed to participating, but are waiting on a week-to-week basis “to get it back from the Solicitors Office.” This has now gone on a long time. It was promised at the end of July at one point, then we were told on Sept. 27 that it would be out later that Friday, Monday at the latest. Monday we were told that the attorneys were still changing and adding language. Early last week we were told that the attorneys had promised to have it back to IA that week. It still hasn’t happened. If your Regional Administrator can help break it loose, that would be most helpful. In the meantime, Indian Affairs has been silent on the basic approach to financing in their proposal. So, we’re in the dark on what they will propose and whether it will provide an acceptable financial foundation to get HAMP constructed. Hopefully, we will have an answer soon.
4. On item 18, you asked who would apply for the grants. At least for the USDA-Rural Development grant and loan package, it will be HPUA. We will have to look at other applications on a case by case basis. For instance, my understanding is that it has to be the Tribe that applies for CDBG grants. There HPUA would be the instigator of the request, but it would go through the Tribe’s channels for application to Rural Development.

5. On item 26, you asked what “protect” meant in the context of “protect[ing] the Hopi Public Water System including the route of the Hopi Public Water system pipelines and other comments of . . . the system.” What we are visualizing is keeping the right of way clear for operation, maintenance and repair, not interfering with the telecommunications gear, not building over the pipelines, etc.
6. On item 8 under the Tribe’s commitments, you asked whether the Tribe’s contribution would be going to HPUA or HPUC. It will be going to HPUA. At this point, both the HPUC and HPUA have been created legally by Tribal ordinance, but no positions have yet been filled.
7. On item 9 under the Tribe’s commitments, you noted that there are a lot of “other reporting activities required by a water system than just a Consumer Confidence Report.” The Consumer Confidence Report” is a key report that the villages, as customers, will rely on so that is why it was singled out. It is useful here to add a more general statement on EPA reporting, so we have done that while still emphasizing what the clients need from HPUA.
8. On item 10 under the Tribe’s commitments, the MOA stresses equal reductions in water service for all water services when water shortages occur, you asked about drought conditions and when water conservation is necessary. Since the water system is based on a deep aquifer, we think it should be immune to those conditions but the text is sufficiently broad that it would cover water shortages of whatever type.
9. On item 11 under the Tribe’s commitments, you asked about indemnification of BIE & BIA when the MOA pledges it to the villages. This is a Tribe-Village MOA, not a more general MOA. A similar commitment would seem appropriate for the BIA/IHS/Tribe agreement. You also noted that EPA is the only entity that regulates the Hopi drinking water system. We would like to maintain room in the MOA for the Tribe to consider drinking water standards, as well.
10. On item 16 under the Villages’ commitments, you ask what happens if a village doesn’t pay its fees. Presumably, a village can be denied service. However, the Tribe provides funds under the designation “H13” to the villages and it can simply shift those grants to HPUA to cover any arrears. These funds currently are used to some extent by villages to cover their water system costs, though they seem to be shifting to more of a utility fee funding basis. FMVC already has such a system in place and Shungopavi is shifting to that approach in January. If your question was whether the MOA should discuss other things villages will have to do in their relationship with HPUA, we think the statement in item 15 indicating that water service agreements with HPUA will be required together with statements in the text about protecting the HPUA facilities and utility corridors should be sufficient, but would welcome suggestions from others on what might be included in a longer list. Here our goal is to cover the HPUA-Village water relationship – not what villages might have to do to comply with EPA requirements.
11. On item 17 under the Villages’ commitments, Brad Rae noted that you have previously stated that non-arsenic compliant wells must be physically disconnected from the system to avoid the requirements and expense of annual well-source sampling. While that need to be addressed in a Tribe-Village agreement, it is an important enough point that we have included it along with several other general information provisions in the section titled “The Parties also understand that:” WE have addressed that subject at what currently is identified as item 26 in our draft. The statement indicates that no blending is allowed and there must be a physical disconnection but the wells need to be fitted so they can be used if there is an emergency situation. Even then, the villages are advised that there will be EPA requirements that must be satisfied. There will be several other items in this category including that fact that the village water systems will still be subject to EPA regulation and certain reporting requirements.

We hope to take up the other comments from IHS over the next few days and will provide you a copy of the draft.

Bill

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